**S.B. CIVIL WRIT PETITON NO.3830/2007.**
Commissioner, Municipal Council & Anr.
Vs.
Satya Prakash Sharma & Ors.

Date of Order :: 19th July 2007.

**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. Yashwant Mehta, for the petitioners.
Mr. G.R. Goyal, Caveator, for the respondent No.1.

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This writ petition has been filed on 10.04.2007 seeking to assail the award dated 07.04.2005 made by the Labour Court, Sriganganagar on a reference made by the State Government on 18.10.2004 on the questions if the respondent-workman Satya Prakash Sharma has been illegally removed from the services on 31.03.1991; and if raising of the dispute nearly 10 years after removal was proper?

The learned Labour Court, after considering the entire evidence on record, has found that the respondent-workman had completed 240 days of services in one year before 31.03.1991 when his services were terminated by oral order; and the same was in contravention of the requirements of Section 25-F of the Industrial Disputes Act, 1947. The learned Labour Court further found violation of Section 25-G of the Act and so also Rules 77 and 78 of the Industrial Dispute Rules.

The learned Labour Court also considered the question of delay in raising the dispute and found that the workman had earlier challenged his retrenchment in writ petition No.2575/1991 that was dismissed and then appeal taken to the Division Bench was also dismissed on 06.03.1999; and observed that later delay, if any, was only on the part of the Conciliation Officer and the Labour Department. The learned Labour Court was also of opinion that merely on the ground of delay, the reference could not be rejected. Accordingly, the learned Labour Court has made the award against the non-applicants Nos. 2 and 3, the present petitioners, holding illegal the removal of the respondent-workman from services on 31.03.1991; and has held him entitled for reinstatement with benefit of continuity of service. However, the learned Labour Court has awarded 50% of the back wages from 18.10.2004, the date of making reference.

On taking up of the matter for motion hearing on 06.07.2007, the workman-respondent No.1 appeared through counsel in caveat; and learned counsel for the parties made submissions ad idem that the subject matter of dispute in the present case was akin to that of S.B.Civil Writ Petition No.1096/2005, decided on 07.04.2005 wherein, in relation to another employee with the petitioner, while not interfering with the award of Labour Court declaring retrenchment invalid, this

Court modified the award to the extent that in place of 50% back wages from the date of retrenchment, the workman was allowed such 50% back wages from the date of reference till the date of award. It was submitted on behalf of the petitioner that while the petitioner does not intend to challenge the award otherwise, the directions in the impugned award regarding back wages were only sought to be challenged; and it was submitted that for the delay caused by the workman in raising the dispute, 50% of back wages ought not be awarded prior to the date of reference. Learned counsel appearing for the workman submitted that in the facts and circumstances of the case, the workman was agreeable if the award was modified to the extent that he shall be entitled for 50% of back wages from the date of reference. In view of the submissions made in consensus by the parties; though expressing reservation about delay in filing of the writ petition more than two years after making of the award, but looking to the assurance stated on behalf of the petitioner that otherwise the award shall be implemented in toto within 30 days, this Court observed that ignoring the delay, the award deserves to be modified as agreed to by the parties. Thus, in view of the submissions made in consensus by the parties, this Court passed the order to the effect that the award made by the Labour Court, Sriganganagar was affirmed but subject to the modification

that workman will be entitled for 50% back wages from the date of reference till the date of award; and that the award shall now be implemented within 30 days.

However,while signing the order it was noticed that such submissions made in consensus by the parties were entirely redundant for the reason that under the award in question, the Labour Court has allowed 50% of the back wages only from the date of making the reference and not for the earlier period and thus, essentially, the award required no modification on the proposition stated by the parties.

On the matter being placed 'to-be-mentioned' on 09.07.2007, learned counsel for the parties expressed regrets for not pointing out complete facts due to bonafide error on their part and, as agreed, the order dated 06.07.2007 disclosing an error apparent on the face of the record was recalled.

Today, learned counsel for the petitioners frankly submits that this petition was essentially taken up on behalf of the petitioners to question the period of back wages and to seek the same relief as was granted by this Court on 07.04.2005 in S.B. Civil Writ Petition No. 1096/2005, modifying the award of back wages and allowing 50% back wages only from the date of reference; and learned counsel frankly submits that in the present case, the Labour Court itself has

allowed 50% of the back wages only from the date of making the reference.

Having examined the impugned award, this Court is satisfied that other findings recorded by the Labour Court remain the findings of fact and do not suffer from any error. As noticed, the Tribunal has awarded 50% of the back wages from the date of making reference and in the circumstances of the case,such award of back wages appears to be just and reasonable. Thus, the award in question does not call for any interference in this writ petition.

The writ petition fails and is, therefore, dismissed summarily.

**(DINESH MAHESHWARI), J.**

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